

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 07-12914  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JANUARY 8, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 05-00563-CV-KD

RICKY STEPHENS,

Plaintiff-Appellee,

versus

HENRY LOVETTE,

Defendant-Appellant.

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Appeals from the United States District Court  
for the Southern District of Alabama

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**(January 8, 2008)**

Before BIRCH, DUBINA and BLACK, Circuit Judges.

PER CURIAM:

Henry Lovette appeals the district court's denial of his motion for summary judgment in Ricky Stephens' 42 U.S.C. § 1983 excessive force action against him. Lovette asserts the district court erred in concluding he was not entitled to qualified immunity. He specifically asserts the district court erred in concluding that his conduct violated clearly established law under the Fourth Amendment standard governing the treatment of arrestees. He contends the district court should have analyzed his qualified immunity argument under the Fourteenth Amendment, which governs the treatment of pretrial detainees. Alternatively, he argues that even if his case is analyzed under the more stringent Fourth Amendment standard, he is entitled to qualified immunity.

After a thorough analysis, the district court concluded Stephens' excessive force claim should be analyzed under the Fourth Amendment, and concluded that Lovette was not entitled to qualified immunity. We have reviewed the record and the parties' briefs, and conclude the district court did not err in applying the Fourth Amendment to Stephens' excessive force claim and denying qualified immunity to Lovette. Thus, we affirm.<sup>1</sup>

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<sup>1</sup> Lovette summarily argues the district court erred in denying discretionary function immunity and peace officer immunity to him. We affirm the district court in the denial of discretionary function immunity and peace officer immunity for the reasons stated in its order of June 23, 2007.

**AFFIRMED.**